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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 09/875,065   | 06/05/2001  | Robert F. Scalese    | 31027-pa                 | 8094             |
| 7590 12/20/2005<br>BERNHARD, KRETEN, ESQ. & ASSOCIATES<br>1331 GARDEN HIGHWAY<br>SUITE 300<br>SACRAMENTO, CA 95833 |             |                      | EXAMINER<br>VAN, QUANG T |                  |
|  |             |                      | ART UNIT<br>3742         | PAPER NUMBER     |

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/875,065

Applicant(s)

SCALESE ET AL.

Examiner

Quang T. Van

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3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-25, 34-37, 44-50, 54 and 58-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-25, 34-37, 44-50, 54 and 58-64 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **QUAYLE ACTION**

This application is in condition for allowance except for the following formal matters:

#### ***Specification***

1. The abstract of the disclosure is objected to because the abstract is more than 150 words and the legal phraseology such as "said" or "means" often used in patent claims should be avoided in the abstract. Correction is required. See MPEP § 608.01(b).

#### ***Allowable Subject Matter***

2. Claims 20-25, 34-37, 44-50, 54, and 58-64 are allowed.
3. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not show or suggest the step of monitoring the microwave energy within the cylindrical microwave while powering the microwave to dry the specimen by comparing a transition of slope of microwave energy absorbed by the specimen with a characteristic microwave energy exemplar as recited in claims 20-21; means for sensing microwave energy for controlling the amount of microwave energy delivered to said chamber as a function of the sample being analyzed by establishing a benchmark correlative to a level of microwave energy sensed and comparing sensed microwave energy to the benchmark as recited in claims 22-25; the steps of applying microwave energy to a sample having a known initial weight and monitoring the microwave energy to detect radiation absorbed by the sample and comparing absorbed radiation to a characteristic radiation curve as recited in claims 34-37; the step of

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comparing the sensed radiation to the algorithm for determining a benchmark correlative to an endpoint condition as recited in claims 44 and 61; the step of comparing a transition of slope on the characteristic radiation curve with a transition of slope on the specimen radiation curve, and continuing to radiate the specimen until a predetermined endpoint condition has been met based on the comparing step as recited in claims 48 and 62; the step of establishing a benchmark correlative to a level of microwave energy sensed by a sensor and comparing the monitored energy level with the benchmark level for controlling a drying process of the sample as recited in claims 49 and 63; and the steps of establishing a characteristic radiation curve of a sample type correlative of its radiation absorbability and comparing subsequently sensed levels of radiation within the chamber with the characteristic curve for determining an endpoint condition as recited in claims 50 and 64; the step of comparing sensed energy to an algorithm to determine a benchmark correlative to an endpoint condition as recited in claims 58; means for sensing changes in microwave energy and means for controlling the amount of microwave energy delivered to said chamber as a function of the changes in the microwave energy being sensed in order to establish a benchmark correlative to a standard as recited in claim 59; and the step of surceasing the applied microwave energy as a function of the changes in the monitored microwave energy upon denoting an end point having been reached upon comparison of applied microwave energy to a benchmark as recited in claim 60.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Jennings et al (US 6,320,170) discloses a microwave volatiles analyzer with high efficiency cavity.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T. Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QV

December 16, 2005



Quang T Van  
Primary Examiner  
Art Unit 3742